

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

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Mayoral Hearing

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Historic Preservation Act Number 15-529

6

1101 4th Street Southwest

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DCRA Conference Room - 2nd Floor

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Washington, D.C. 20024

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9:29 a.m. to 10:10 a.m.

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Tuesday, January 5, 2016

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1 APPEARANCES:

2 J. PETER BYRNE, Mayor's Agent

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On Behalf of Opponents:

4 HOLLAND & KNIGHT

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6 BY: DENNIS R. HUGHES, ESQ.

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On Behalf of Opponents:

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9 Washington, D.C. 20036

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10 BY: TONY BARROS, ESQ.

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On Behalf of Advisory Neighborhood Commission 2E:

12 COMMISSIONER JEFF JONES

13

On Behalf of Advisory Neighborhood Commission 2E:

14 SUTHERLAND ASBILL & BRENNAN

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15 Washington, D.C. 20001

202-383-0635

16 BY: RICHARD G. MURPHY, JR., ESQ.

17 On Behalf of the Historic Preservation Office:

TIMOTHY DENNEE

18

Applicant:

19 KAREAB ZERE

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1 P R O C E E D I N G S

2 MR. BYRNE: It's 9:30, and I wish you all good
3 morning. I'm Peter Byrne. I am the designated Mayor's
4 Agent for this matter, which involves a subdivision
5 application to consolidate five Assessment and Taxation lots
6 into one lot of record. The properties are Assessment and
7 Taxation Lots 804, 814, 818, 820, and 822 in Square 1230
8 within the Georgetown Historic District. This application
9 is assigned a Historic Preservation Act Number 15-529. The
10 case is being heard under the authority of D.C. Law 2-144,
11 the Historic Landmark and Historic District Protection Act
12 of 1978. This law requires the Mayor or Historic
13 Preservation Review Board or her Agent to review proposed
14 subdivisions and permit applications for demolition,
15 alteration, and new construction on the site of historic
16 landmarks or within historic districts.

17 Prior to consideration by the Mayor's Agent, the
18 law requires that applications be referred to the Historic
19 Preservation Review Board for consideration; and on October
20 22, 2015, the Review Board recommended against the
21 subdivision on the grounds that it would not be consistent
22 with the purposes of the Historic Landmark and Historic

1 District Protection Act. After the Board made its
2 recommendation, the Applicant requested this public hearing,
3 as provided by law.

4 The hearing will be conducted in conformance with
5 D.C. Administrative Procedure Act and Title 10-C, the
6 District of Columbia Municipal Regulation, which contains
7 the Rules of Procedure for the Mayor's Agent pursuant to the
8 Preservation Law. So we'll proceed as follows: First, we
9 will have the consideration of any pending motions or
10 procedural matters. Second, we'll have the presentation of
11 the Applicant's case. Third, we'll have reports or
12 statements by public agency representatives; fourth,
13 statements by affected Advisory Neighborhood Commissions;
14 fifth, parties and other persons in support of the
15 application; six, parties and other persons in opposition to
16 the application; seven, rebuttal by the Applicant; eight,
17 rebuttal by parties in support of the application; and nine,
18 surrebuttal by the parties in opposition to the application.

19 So I am aware of three motions for party status
20 in the case. So I have one filed by Dennis Hughes and
21 Norman Glasgow is --

22 You are, sir?

1 MR. HUGHES: I'm Dennis Hughes.

2 MR. BYRNE: You're Dennis Hughes? And you are on
3 behalf of one of the neighbors, Mr. Lauder?

4 MR. HUGHES: Yes, sir.

5 MR. BYRNE: Okay. Good.

6 And then another filed by a lawyer, Mr. Martin
7 Sullivan.

8 MR. BARROS: I'm Tony Barros, sir.

9 MR. BYRNE: Tony Barros?

10 MR. BARROS: In place or Marty.

11 MR. BYRNE: Okay. And you're representing a
12 number of homeowners who are adjacent to the alley in
13 question?

14 MR. BARROS: Yes, sir. That's correct.

15 MR. BYRNE: Okay. Fine. And then finally I have
16 one from ANC-2E, some --

17 MR. JONES: Jeff Jones. I am ANC-2E Commissioner
18 for District 03, which this alley is located.

19 MR. BYRNE: Okay. Good.

20 Is anyone else here seeking party status?

21 (No response heard.)

22 MR. BYRNE: Okay. Good. So and then the

1 Applicant. The Applicant, are you the Applicant?

2 MR. ZERE: Yeah. Kebraab Zere.

3 MR. BYRNE: How do you do, sir? Do you have
4 any -- do you have any objection to them having party
5 status?

6 MR. ZERE: Well, I got the letter from Holland
7 and Knight I think I -- I just got the letter on the 26th or
8 27th.

9 MR. BYRNE: Hm-hm.

10 MR. ZERE: And I guess it's supposed to lead us
11 ahead maybe 15 or 20 days ahead.

12 MR. BYRNE: Is that true? No. I don't think
13 there is any -- I don't think there is any provision for a
14 time.

15 MR. ZERE: Yeah. They say they hand-deliver it
16 here, but they didn't hand-deliver it to me. They mailed
17 it, and I got it on the 27th so --

18 MR. BYRNE: So do you have a -- do you have a
19 provision of law to cite to suggest that there's a time
20 before which you're supposed to get --

21 MR. ZERE: Well, I read that I should get notice
22 15 days or 20 days ahead, at least.

1 MR. BYRNE: So I don't have -- I don't have -- is
2 that in -- where is that stated? Is that in the
3 regulations?

4 MR. ZERE: Yeah, in regulation. Yeah.

5 MR. BYRNE: Okay. Can you -- do you have a copy
6 of that you can show me? I don't recall that.

7 MR. ZERE: You don't recall that?

8 MR. BYRNE: I don't recall that.

9 MR. ZERE: It's going to take me time to find it,
10 but --

11 MR. BYRNE: Are you --

12 MR. ZERE: -- I want it on the record.

13 MR. BYRNE: You're not surprised that they're
14 here, though, in opposition, though? I mean that's not a
15 surprise?

16 MR. ZERE: No.

17 MR. BYRNE: Mr. Hughes, do you have a copy of the
18 regulations? I see you flipping.

19 MR. HUGHES: I do.

20 MR. BYRNE: Can I take a look for a second?

21 MR. HUGHES: Certainly.

22 MR. ZERE: He knows. Mr. Dennee, he knows it.

1 MR. BYRNE: Okay. So, sir, the regulations
2 pretty clearly state that the application has to be filed
3 with the office 15 days before, but it also independently
4 provides for service by mail. So I don't see that there's a
5 ground upon which you can object to that.

6 Okay. So I'm going to grant all those petitions
7 for party status, and we can proceed.

8 So, sir, one issue that struck me as a
9 preliminary matter is that, as I understand it, your
10 argument for subdivision is primarily based upon
11 unreasonable economic hardship; is that --

12 MR. ZERE: No.

13 MR. BYRNE: No? Okay. Okay. I thought it was.
14 So you're not arguing that --

15 MR. ZERE: No. I'm -- my basis for the argument
16 is the 1978 Act, Historic Preservation Act, it deals with
17 dividing a lot into two or more lots. It doesn't deal with
18 combining lots. That's the basis of my argument.

19 MR. BYRNE: That's the basis of your argument?

20 MR. ZERE: Yeah. I have a citation, a precedent
21 case.

22 MR. BYRNE: I sort of saw that. Okay. So is

1 that -- that's your sole argument?

2 MR. ZERE: That's -- yeah, I have added the
3 economic hardship just to make things clear.

4 MR. BYRNE: Okay.

5 MR. ZERE: The impact it will have on me if it's
6 denied. But the basis of my argument is the 1978 Act, it
7 deals with dividing a lot into two or more lots. It doesn't
8 deal with combining lots. I have citations here.

9 MR. BYRNE: Okay. All right. All right. Well,
10 we can proceed on that argument. The problem I had with the
11 unreasonable economic hardship is that the ordinance
12 requires you to have filed an affidavit 20 days ahead of
13 time sort of stating the economic basis for that, and I
14 understand you haven't done that.

15 MR. ZERE: That's not my --

16 MR. BYRNE: So that's not your -- okay. So we're
17 going to strictly -- strictly looking at the legal argument
18 about the nature of the subdivision. All right, sir.

19 So I take it you're not represented by counsel?

20 MR. ZERE: No.

21 MR. BYRNE: Okay. But you're going to make a
22 legal argument?

1 MR. ZERE: Yeah.

2 MR. BYRNE: Okay. All right. Well, I think
3 we'll proceed with that then. All right. Now, let's see.
4 I think this is complicated in a way, because, if you put
5 the witness on, you're going to make an argument. So there
6 are factual matters that I suppose are -- for which you
7 should be sworn as a witness. I assume you're going to
8 describe the nature of the purchase of the lots and sort of
9 their location and that sort of thing as part of what you're
10 going to say; is that correct?

11 MR. ZERE: Yeah, but doesn't matter.

12 MR. BYRNE: It doesn't matter?

13 MR. ZERE: It doesn't matter. I mean, the law is
14 the law, and I have -- there are precedence cases where he
15 approved a combination of lots. I can -- I have the
16 citation. I can read my statements, if you want.

17 MR. BYRNE: Okay.

18 MR. ZERE: If you want, I can give you the copy.

19 MR. BYRNE: So I -- you filed a document with me.
20 Let's sketch this argument out. Is this --

21 MR. ZERE: The Board approved several times --

22 MR. BYRNE: Right.

1 MR. ZERE: -- for combination and -- and I can
2 cite you precedent case.

3 MR. BYRNE: Right. Okay. Okay. So I'm going to
4 ask you, though, to -- since you're not a lawyer, I'm going
5 to ask you to be sworn as a witness so that any statements
6 you give as to facts will be evidence that will be in the
7 record as such. So if you -- would you mind raising your
8 right hand? And do you promise to tell the whole truth
9 about the facts of this matter to the best of your ability?

10 MR. ZERE: I do.

11 MR. BYRNE: All right, sir. Well, you can
12 proceed then with your statement.

13 MR. ZERE: Do you want me to read it to you?
14 I'll give you a copy.

15 MR. BYRNE: Okay. Let me see if it's different
16 from what I have.

17 MR. ZERE: Well, just a little bit.

18 MR. BYRNE: Just a little bit different. I see
19 it is different.

20 MR. ZERE: It's not to --

21 MR. BYRNE: Have you given a copy to any of these
22 other folks?

1 MR. ZERE: Yeah, I can give to them.

2 MR. BYRNE: You can give it to them?

3 MR. ZERE: Yeah.

4 MR. BYRNE: Okay. Can you do that? Give -- do
5 you have three copies you can give to --

6 MR. ZERE: I have one for me, and I have three
7 extras.

8 MR. BYRNE: Three extras. That's good. Okay.

9 MR. ZERE: Three extra. They can share it.

10 MR. BYRNE: He says these are a little different
11 so --

12 MR. ZERE: It's not -- the substance is the same.

13 MR. BYRNE: The substance is the same? Okay.

14 MR. ZERE: The substance is the same.

15 MR. BYRNE: Okay. All right. I should get a
16 copy of that too, actually. So I've got to take one. Maybe
17 you guys can share, because he says there's nothing
18 different but --

19 Okay. All right, Mr. Zere. All right. You may
20 proceed, sir.

21 MR. ZERE: Okay. January 5, 2016, District of
22 Columbia Mayor's Agent, subject: Appeal to reverse Historic

1 Preservation Review Board Act Number 15-529 to combine lots
2 804, 814, 818, 820, 822, Square 1230 into a single lot.

3 Your Excellency, ladies and gentlemen, my name is
4 Kebreab Zere, and I am the owner of the above-captioned
5 lots, which is the subject of today's hearing. Please
6 accept my highest regard for giving me the opportunity to
7 appeal the Historic Preservation Review Board's Act 15-529,
8 dated October 22, 2015.

9 The HPRB erred in its decision when applying the
10 Historic Preservation Act 1978 by denying my application for
11 subdivision. And, thus, I am appealing to the esteemed
12 Mayor's Agent to reverse the Board's Act 15-529.

13 The HPRB stated the reason for its denial as
14 follows: Number one, "The proposed alteration is
15 inconsistent with the purposes of the D.C. Historic Landmark
16 and D.C. Historic Preservation Act of 1978, or D.C. Code
17 Section 6-1101 2001." It further stated, "The proposed
18 subdivision was incompatible with the character of the
19 historic district, and thus incompatible with the
20 preservation law, because the conversion of the assessment
21 and taxation lots into a single lot of record could allow
22 construction upon and alteration of the private alley, that

1 would be incompatible with the character of contributing
2 accessory buildings facing the alley, potentially altering
3 their context and possibly obscuring their primary
4 elevations and causing physical alterations to them.

5 My response: The issue before us today is
6 whether the 1978 Historic Preservation Act deals with
7 subdividing a lot into two or more lots, as well as
8 combining or consolidating lots. The Act doesn't prevent me
9 from combining my five lots into one, because the Act deals
10 only with subdividing a lot into two or more lots, not with
11 combining lots.

12 I cite District of Columbia Appeals Court
13 caselaw, which clearly stated that the Act does not deal
14 with combining lots, Alice S. Acheson, Appellant, versus
15 R.B. Sheaffer and Jack Thomas Elmore, No. 85-754, decided
16 January 26, 1987. "The sole issue is whether the division
17 of several property lots and their subsequent combination
18 constitutes a subdivision within the meaning of the Historic
19 Landmark and Historic District Protection Act, D.C. Code
20 5-11001 1981. The District of Columbia Court of Appeals
21 affirmed these actions don't constitute a subdivision."

22 The D.C. Council of Housing and Urban Development

1 in its Capsule Legislative History Bill 2-367 stated, "In
2 contrast to the Historic Landmark and Historic District
3 Protection Act of 1978, at October 5, 1978, subdivision
4 regulation, which define subdivision as a division or
5 assembly of land into one or more lots of record, the Act
6 defines subdivision as the division of a lot into two or
7 more lots of record." It is clear from these comments that
8 the omission of assemblies of land from the purview of the
9 Act was deliberate. Even if construction is contemplated,
10 it is subject to prior review, as per D.C. Code 5-1005 1987.

11 The HPRB had approved several subdivision
12 applications, combination of lots, in a historical district.
13 For instance, the Board approved HPA 00-149, Applicant 1441
14 Rhode Island Associates, LLC, location of property 1439
15 Rhode Island Avenue North West, consolidation of lots 93,
16 94, 833, and 824, Square 210 into a single lot of record.
17 The Board stated, "The subdivision of Applicant's four
18 vacant lots with a fifth lot housing a part of the landmark
19 Rhode Island Residential Building extended the Historic
20 Preservation Review Board's authority to all new
21 construction on the newly formed record lot."

22 Similarly, the following consolidations were

1 approved: HPA 01-144, location of property 300 to 302 H
2 Street and 748 Third Street North West, consolidation of
3 Square 529, lot 921, 25, 30, 31, 811, 817, 820, 821, 829,
4 835, 83, 840, 841, and 844, and part of an alley to be
5 closed into a single lot of record; HPA 02-635, location
6 3031 Gates Road North West, date February 14, '03,
7 consolidation of lots 872, and 872, Square 2263 into a
8 single lot; HPA 91-261, May 11, 1992, consolidation of Tax
9 Assessment lots 800 and 812, Square 14 into a single record
10 lot.

11 Number two, HPRB stated that I need to
12 demonstrate that failure to issue permit will result in
13 economic hardship. I don't intend to discuss on this topic
14 in detail; but, for the sake of clarification, the lots are
15 each about 660 square foot for a total area of about 3,100
16 square foot. There is no question that the lots will have
17 viable economic use and higher market value when they are
18 combined. Consolidation of the lots is the first step for
19 any future plans. Thus, if my plan for consolidation is not
20 approved, the lots will almost become worthless.

21 I would like to cite the U.S. Supreme Court case
22 of Lucas versus South Carolina Coastal Council of June 29,

1 1992, which stated, "A regulation that deprives an owner of
2 all economically-beneficial uses of a land constitutes a
3 taking, unless the proscribed use interests were not part of
4 the title to begin with."

5 The U.S.A. Fifth Amendment states, "Property
6 refers not simply to the underlying estate, but all the use
7 that can be made of that estate. When property means simply
8 the underlying estate, however, because the government takes
9 away the use through regulatory restrictions, then the owner
10 loses its economic value and thus entitles him to get just
11 compensation from the government.

12 At this point of time, I have no plans to
13 construct anything on the lots, but what I am trying to do
14 is consolidate the five lots into one, which is necessary
15 for all practical purposes. Thus, I am not altering the
16 character or context of the buildings of the abutting
17 neighbors.

18 The neighbors' main buildings face N, O, Potomac,
19 and 33rd Street. The properties are in a historical
20 district, but are not listed in the District of Columbia
21 Inventory of Historical Sites and the National Register of
22 Historic Place. What the neighbors have in their backyards

1 are garages, not alley dwellings, which make the place look
2 ugly, let alone to have any historical significance. The
3 dwellings listed in Georgetown, Washington D.C. are located
4 at Poplar Street, East Street, Orchard Lane, Canton's Alley,
5 James Court, Bell's Court, Cecil Alley, and Dyer's Alley.
6 The underlying objection not to consolidate my lots under
7 various regulatory pretext is for the neighbors to have free
8 access to their garages. It is illegal for the neighbors to
9 build a garage in their backyards and trespass through
10 private property, and shouldn't be done by making my lots
11 worthless.

12 The U.S.A. 14th Amendment states, "Nor shall any
13 state deprive any person of life, liberty, or property
14 without due process of law, nor deny to any person within
15 its jurisdiction the equal protection of the law."
16 Therefore, I politely appeal the Mayor's Agent to reverse
17 the Historic Preservation Review Board Act 15-529, because
18 the Historic Preservation Act 1978 deals with dividing a lot
19 into one or more lots, but not combining one or more lots
20 into one. This will avoid us time- and resource-consuming
21 court litigation.

22 Again, thank you for giving me the opportunity to

1 appeal.

2 MR. BYRNE: Thank you, Mr. Zere. All right.

3 Sir, do you have anything you want to add to that now? Do
4 you have anything else you want to say at this time about
5 the matter?

6 MR. ZERE: Say it again.

7 MR. BYRNE: Do you want to say anything further,
8 besides your statement?

9 MR. ZERE: No, unless you have question.

10 MR. BYRNE: I don't right now.

11 Is there anyone here in support of Mr. Zere's
12 application?

13 (No response heard.)

14 MR. BYRNE: I'm not seeing anyone. Okay.

15 Then let's hear from the representatives of the
16 public agency, and that would be Mr. Dennee. So Mr. Dennee,
17 come sit here with me. I suppose I should swear you as
18 well.

19 MR. DENNEE: Absolutely.

20 MR. BYRNE: Yes. Okay. Thank you. So do you
21 promise to tell the entire truth to the best of your
22 ability?

1 MR. DENNEE: I do.

2 MR. BYRNE: Thank you very much. Please proceed.

3 MR. DENNEE: Three quick points. One, the
4 contention that only divisions of property and not
5 assemblages are subject to the Preservation Statute is
6 incorrect. I will read from the statute itself, the
7 definitions section three, subsection 13. "Subdivide or
8 subdivision means the division or assembly of land into one
9 or more lots of record," etcetera. That's the relevant
10 part.

11 MR. BYRNE: That's the definitions section of --

12 MR. DENNEE: That's the definitions section of
13 the Act, yes.

14 MR. BYRNE: Okay.

15 MR. DENNEE: Mr. Zere characterized that as the
16 sole issue, but he went on to other issues. So I'll hit on
17 those a little bit. Denying a subdivision in this case, in
18 our opinion, would not constitute a taking because the lots,
19 as they are, have little value, including probably none for
20 the purposes of construction. This would have been apparent
21 with just a bit of research. The Applicant requests that
22 the government increase their value on Historic Preservation

1 Review Board behalf. We believe that only by allowing the
2 creation of a single lot of record that's large enough for
3 development and then denying construction would there be a
4 colorable claim to a taking.

5 MR. BYRNE: I'm sorry. Say that again.

6 MR. DENNEE: If the Mayor's Agent allowed the
7 creation of a single lot of record that was large enough for
8 development, and then the government took an action that
9 disallowed development, we think then there might be a
10 claim, a colorable claim to a taking.

11 But while they are five A and T lots of
12 insufficient size to develop, they're not lots of record,
13 and they have historically been a private alley, we don't
14 think that they have a value which is to be taken from the
15 government. The Mayor's Agent may be aware that there is a
16 bill pending in Council to potentially literally take the
17 property and compensate Mr. Zere, as he suggests the City
18 ought to.

19 And then finally, of course, to get back to sort
20 of our narrow field of evaluation, from a historic point of
21 view, these Assessment and Taxation lots are still the rear
22 portions of the historic N Street lots, and at the same time

1 part of a private alley nearly as old that was created for
2 the use of those properties. A subdivision which would
3 combine these A and T lots and create a lot of record would
4 allow, in theory, the construction of a residence that would
5 be incompatible with the character of that alley,
6 particularly affecting visually and physically the couple of
7 significant accessory buildings that face and relate to the
8 alley.

9 We think that there's probably a sort of more
10 subtle preservation argument based on, you know, what is the
11 function of an alley in the space and sort of the landscape
12 of an urban block. But we grounded our argument mainly on
13 the sort of direct and indirect effects to specific
14 contributing buildings, which we thought was the least
15 arguable proposition in the matter. And I will leave it at
16 that.

17 MR. BYRNE: Okay. So I'll just ask you, since it
18 seems to be the only issue that we have here. So Mr. Zere
19 has given us a case from 1987. I take it the statute was
20 amended at some point?

21 MR. DENNEE: The statute was amended in 1991, and
22 I believe it was --

1 MR. BYRNE: 1991.

2 MR. DENNEE: I believe it was amended for the
3 purpose of also including the assembly of land.

4 MR. BYRNE: Right. And, as Mr. Zere pointed out,
5 the Historic Preservation Review Board has passed on many
6 cases --

7 MR. DENNEE: Oh, yes.

8 MR. BYRNE: -- allowing consolidation as viewing
9 it as a matter within their jurisdiction.

10 MR. DENNEE: That's absolutely true. That's what
11 the law allows for. But the law says that a subdivision
12 must be in the public interest in order to be approved.

13 MR. BYRNE: Okay. Very good. All right. Thank
14 you. I don't have any further questions.

15 So next we'll hear from the ANC. Sir?

16 MR. JONES: Sure. And I'm --

17 MR. MURPHY: I just want to make one point --

18 MR. BYRNE: Okay. Please have a seat over here.

19 And, sir, I'll let you speak. I'm --

20 MR. MURPHY: I'm Richard Murphy. I'm
21 representing the ANC. I think we've already put this to bed
22 with the prior witness' testimony, but it strikes me that

1 the sole argument made here is that the Act doesn't apply to
2 this application, and it seems to me that that argument was
3 waived when he made the application to the Board and didn't
4 raise that issue below. So I would ask that you dismiss
5 that argument entirely. And Mr. Jones is willing to
6 testify, is ready to testify on behalf of the ANC.

7 MR. BYRNE: Okay. I understand your point.

8 All right, sir. Would you please -- let's do
9 this first. Do you promise to tell the whole truth to the
10 best of your ability?

11 MR. JONES: Yes, I do.

12 MR. BYRNE: All right. Please state your name
13 for the record, and then proceed with your statement.

14 MR. JONES: My name's Jeff Jones, ANC-2E
15 Commissioner for S and D 03, which this alley occupies.
16 And, frankly, again going back to this latest argument of
17 the Applicant, this has been a moving target the neighbors
18 have been suffering through for many years now that has been
19 denied by every board hearing, from the ANC when it
20 initially wanted to propose a fence going across the
21 alleyway into HPRB, the old Georgetown Board Committee of
22 the whole with D.C. counsel. At every step it has been

1 strongly denied. And we're at this point now and the
2 neighbors, you know, are trying to protect public interest
3 here, but public interest has already been damaged somewhat
4 by having to go through this experience, continuing to go
5 through this experience, and as more different positions are
6 taken with this moving target.

7 So you do have a copy of this, I believe, on
8 record, but just to summarize in brief our resolution -- I'm
9 not going to read all this. But ANC strongly supports the
10 Historic Preservation Review Board's decision that
11 subdividing these tax lots into a single recordation lot
12 would greatly jeopardize the public's interest and would
13 destroy the historic context of significant contributing
14 buildings adjacent to these tax lots.

15 So there are primarily -- I have -- we have three
16 positions. First off, damaging the public interest. These
17 tax lots have been operated as access for well over 100
18 years for access to these homeowners' garages and service
19 structures. And its been maintained by the City from DDOT,
20 resurfacing of the alley. Utility companies require access.
21 Fire and emergency medical services, and PD all use this
22 alley for access, as well as the residents themselves

1 needing access to their buildings. So it's very much in the
2 public interest to keep this in the current state.

3 Regarding the HPRB's determining that subdivision
4 of these lots would cause significant harm, particularly to
5 3259 and 3263 N Street, Mr. Dennee did a fabulous job. I do
6 not need to go into that. But it's -- we strongly agree
7 that by putting any kind of walking -- or prohibiting or any
8 kind of anything that would create damaging the views or
9 structures of 3259 and 3263 should be avoided, and nothing
10 should occur to damage these significant contributing
11 buildings.

12 Finally, regarding economic hardship, I will just
13 read to you real brief something that came from Council
14 Member -- Chairman Mendelson and Council Member Evans signed
15 a letter just yesterday regarding the -- I'll just say we
16 agree with their comment that Mr. Zere is claiming that the
17 denial of Historic Preservation Review Board subdivision
18 request is causing him unreasonable economic hardship.
19 However, the City is currently, and has been for several
20 months, in negotiations with Mr. Zere for the purchase of
21 these lots and has already presented an offer that will make
22 him whole.

1 So that is everything I have for you.

2 MR. BYRNE: Okay. So I have a letter dated
3 January 4, that's yesterday, from Chairman Mendelson and
4 Council Member Evans.

5 MR. JONES: Right.

6 MR. BYRNE: It does not state that an offer's
7 been made I don't believe.

8 MR. JONES: The last -- the very last paragraph
9 in the letter that I received emailed to me yesterday --

10 MR. BYRNE: You have a different letter than I
11 do. So I take that as hearsay evidence --

12 MR. JONES: Okay. That's fine.

13 MR. BYRNE: -- may or may not be relevant.

14 MR. JONES: Okay. Well, I would also -- HPO
15 staff has also made the argument that the Applicant has
16 received basically -- argue that what he for \$25,200
17 received exactly what he was offered, five small unbuildable
18 lots with various incumbrances.

19 MR. BYRNE: Okay. Good.

20 MR. JONES: Thanks.

21 MR. BYRNE: Very good. Thank you very much for
22 your testimony.

1 MR. JONES: You bet.

2 MR. BYRNE: All right. So I'm happy to hear
3 evidence from other people, but I'm not sure that there's
4 much factually that's in dispute here. As I understand it,
5 Mr. Zere is not arguing that this is an unreasonable
6 economic hardship. He's not arguing that to me.

7 As I understand it, and correct me, Mr. Zere,
8 your argument here today is simply that the Board and I for
9 that matter don't have jurisdiction over lot assemblies
10 under the subdivision provision of the Act; is that correct?

11 MR. ZERE: Well, I cannot say that. I'm not
12 saying that he can't -- what I'm saying is the 1978 Historic
13 Preservation Act, it deals with dividing a lot into two or
14 more lots.

15 MR. BYRNE: Okay.

16 MR. ZERE: It doesn't prevent to combine the
17 lots.

18 MR. BYRNE: Well, what do you make of the
19 amendment of the statute in 1991?

20 MR. ZERE: I haven't seen it.

21 MR. BYRNE: You haven't seen it?

22 MR. ZERE: I haven't seen it.

1 MR. BYRNE: Okay. Well, it --

2 MR. ZERE: -- let me look at it.

3 MR. BYRNE: Well, no. We're not going to do
4 that.

5 So all right. Is -- I'm going to ask if anyone
6 else in opposition cares to present evidence or make a legal
7 argument this morning.

8 MR. BARROS: I'd like to read a prepared
9 statement, sir.

10 MR. BYRNE: All right. Fine. That's fine. So
11 you're offering this as representative of the parties. So I
12 don't need to swear you in I don't believe.

13 MR. BARROS: Yes, that's correct. I would ask or
14 submit a motion that at least as a matter of law perhaps we
15 might have a decision that a subdivision, in fact, includes
16 an assemblage or combination of lots.

17 MR. BYRNE: Yes.

18 MR. BARROS: All right.

19 MR. BYRNE: Is that what you're going to address?

20 MR. BARROS: Well, I'd say at the outset that
21 D.C. Law is very clear.

22 MR. BYRNE: Yes.

1 MR. BARROS: And I'd also say that Mr. Zere's
2 application for subdivision he signed and submitted
3 obviously he thought that this was a subdivision.

4 MR. BYRNE: Yes. So I think -- you know, I don't
5 know that we need to go any further with this in the sense
6 that the statute is clear in terms of the definition of a
7 subdivision, Mr. Zere. And I'm sorry to say that you have
8 read an old version of the statute, which was changed many
9 years ago so that subdivision includes consolidation. And
10 the court case that you've cited to me from 1987 is from
11 before when the statute was amended. So it's not really --
12 it's no authority on your matter.

13 MR. ZERE: Let me look at the amendment. Another
14 thing is, even if deals with combination, there is no reason
15 why I can't combine my lots. There is no reason.

16 MR. BYRNE: Okay. So now you're changing your
17 argument. And there is a reason to do it, which is the
18 Historic Preservation Review Board found that it was not
19 consistent with the purposes of the Act, which you had a
20 hearing on. And you've not presented to me any evidence as
21 to why it is consistent with the Act, except what is in your
22 statement, which are quite conclusory statements about the

1 nature of alleys, which I think I'm not at all inclined to
2 take very seriously.

3 MR. ZERE: Right here?

4 MR. BYRNE: Yeah. Subdivision means the division
5 or assembly of land into one or more lots. So it plainly
6 does cover what you're requesting, and that is conclusive on
7 what I understand to be the only argument that you've
8 presented today.

9 MR. ZERE: Well, even if the law deals with
10 combining lots, that is no reason why I cannot consolidate
11 my lots.

12 MR. BYRNE: Yes, because the lots can only be
13 consolidated under the Act if it is necessary in the public
14 interest, or the denial of doing so would impose an
15 unreasonable economic hardship on you. That's what the
16 statute says.

17 And the Historic Preservation Review Board has
18 found that it is not consistent with the purposes of the
19 Act. You've not alleged any grounds for me to disagree with
20 them, and you've disclaimed any intent to present me with an
21 argument as to why it's an undue economic hardship. So I --
22 you know, with all due respect, I can't see any ground upon

1 which I can possibly rule in your favor.

2 MR. ZERE: It's okay. I'll go to the court.

3 That's it.

4 MR. BYRNE: Okay. All right.

5 THE REPORTER: What --

6 MR. BYRNE: He said -- I'm sorry. He said --

7 MR. ZERE: I feel that I am entitled to combine
8 my lots.

9 MR. BYRNE: I understand that you feel that way,
10 but I disagree with you.

11 He said he's going to go to the courts.

12 MR. BARROS: But on the record, the sole issue
13 before you today, sir, is whether or not D.C. Law includes a
14 consolidation of the lots.

15 MR. BYRNE: Yes. He's -- I think Mr. Zere very
16 clearly narrowed the focus of his argument to that, and he
17 disclaimed any interest in arguing unreasonable economic
18 hardship, and, indeed, did not file the affidavit he should
19 have filed if he was going to argue that. So I have to say
20 that he's -- in so far as I'm concerned, he's abandoned that
21 argument. And it may well be that, in justice, the City
22 should never have sold him these lots, and that he may, as a

1 matter of justice, be entitled to get his money back from
2 the City; but that's not a question that I have any
3 expertise or authority to address.

4 MR. ZERE: Well, I have clarified to bring up to
5 on me, if these lots are not combined -- it's the first step
6 to use these lots, to build them, sell them for any purpose.
7 That's the first step. So the impact is clear. When the
8 lots are separated 630H, and when you combine them they are
9 together 3,100, the economic value, the market value
10 viability is different. I have stated it. So I didn't
11 eliminate it.

12 MR. BYRNE: Yes, you did.

13 MR. ZERE: I didn't bring figures of the economic
14 impact. I didn't bring -- I didn't bring figures, but I
15 already mention that it will have an impact if I -- if I'm
16 not allowed to combine these lots.

17 MR. BYRNE: So I asked you if you were making
18 that argument to me, and you said you were not.

19 MR. ZERE: Huh?

20 MR. BYRNE: I asked you if you were making that
21 argument today, and you said you were not.

22 MR. ZERE: You asked me, but even my statement I

1 said it will have an economic impact.

2 MR. BYRNE: Of course it does have an economic
3 impact, but whether it's an unreasonable economic impact as
4 a matter of law is a complicated legal question that would
5 involve many issues that you've not presented any evidence
6 on. So, for example, is there a public easement over this
7 land; what were your reasonable expectations at purchase.
8 There are a number of issues that would pertain to that
9 question, and you have said that you're not going to present
10 any evidence on that. So there's no -- I have no -- and you
11 disclaimed the argument. So I can't really address that. I
12 suppose that you could file a lawsuit, but I would think
13 you'd have a pretty uphill battle to say the least.

14 So I'm very sorry, but I think there's no -- I
15 don't see any basis for continuing the hearing. And
16 therefore, I'm going to bring it to a close, and I will
17 issue a short statement or opinion order to that effect as
18 soon as I can manage it. So if there's nothing else, I'll
19 bring this to a close and say thank you all very much.

20 (Thereupon, the hearing concluded at 10:10 a.m.)

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